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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBIE DAVIDSON,

                    Plaintiff,

v.

ELDON VAIL, et al.,

                    Defendants.

CASE NO. C11-6048BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13   This matter comes before the Court on the Report and Recommendation ("R&R")

14   of the Honorable Karen L. Strombom, United States Magistrate Judge. Dkt. 40. The

15   Court having considered the R&R and the remaining record, and no objections having

16   been filed, does hereby find and order as follows:

17   (1)   The R&R is **ADOPTED**; and Defendants' motion to dismiss (Dkt. 27) is

18   **granted in part and denied in part as follows:**

19   (a)   Defendants' motion to dismiss is **GRANTED as to** Plaintiff's

20   claims relating to the rejection of his mail including claims that the rejections constituted

21   a denial of due process, unreasonable searches and seizures, a violation of equal

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1 protection, denial of access to courts, violation of the Eighth Amendment, and retaliation,

2 and these claims are **dismissed without prejudice for failure to exhaust.**

3   (b)   Defendants' motion to dismiss is **GRANTED as to** Plaintiff's

4 claims against Defendants in their official capacities and these claims are **dismissed with**

5 **prejudice.**

6   (c)   Defendants' motion to dismiss is **DENIED as to** Plaintiff's claim

7 that he was wrongfully held beyond his early release date.

8   (d)   Defendants' motion to dismiss is **DENIED as to** Plaintiff's claim

9 that materials were removed from his legal box. Plaintiff shall submit an amended

10 complaint **within twenty days** of this Order.

11   (e)   Defendants' motion to dismiss is **DENIED as to** Defendants'

12 motion for costs and attorney's fees and the imposition of a 28 U.S.C. § 1915(g) strike.

13   (2)   This matter is re-referred to the Hon. Karen L. Strombom for further

14 proceedings.

15   Dated this 6th day of March, 2013.

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                            BENJAMIN H. SETTLE

18   United States District Judge

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ORDER